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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL FRANCIS MOYNIHAN, JR.,

11 Plaintiff,

12 v.

13 TOM SCHLICHER,

14 Defendant.

Case No. C11-1829-JLR-JPD

REPORT AND RECOMMENDATION

15 This matter comes before the Court *sua sponte*. Plaintiff Michael Francis Moynihan, Jr.
16 has filed a civil action naming Tom Schlicker, Chief of the Swinomish Tribal Police Department,
17 as the lone defendant. Plaintiff appears to assert in his complaint that Chief Slicker is liable for
18 the actions of a Swinomish Tribal Police Agent whom plaintiff alleges detained him without
19 authority in June 2006. Plaintiff seeks damages arising from his alleged wrongful detention.

20 This Court construes this action as one seeking to impose liability under 42 U.S.C.

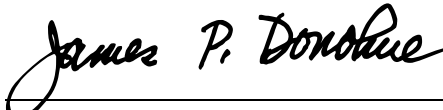
21 § 1983.¹

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23 ¹ Plaintiff has not alleged in his complaint any other viable basis for this Court's jurisdiction over his claims.

1 A review of this Court's records reveals that in 2010, plaintiff filed a civil action against
2 the Swinomish Tribal Police Agency concerning the same June 2006 incident which is the
3 subject of this action. *See Moynihan v. Swinomish Tribal Police Agency*, C10-502-RSM. That
4 action was likewise construed as one seeking to impose liability under 42 U.S.C. § 1983 for
5 alleged unlawful detention and the action was dismissed in May 2011 for failure to state a claim
6 upon which relief may be granted. The Court specifically noted in its Order of Dismissal (C10-
7 520-RSM, Dkt. No. 26) that actions under § 1983 "cannot be maintained in federal court for
8 persons alleging a deprivation of constitutional rights under color of trial law." *Evans v. McKay*,
9 869 F.2d 1341, 1347 (9th Cir. 1989). The Court further noted that plaintiff had made no showing
10 that the conduct complained of was committed under color of *state* law as is required to maintain
11 an action under § 1983. *See id.* The same is true in this action.

12 As this action is substantially similar to an action previously dismissed by the Court, and
13 as plaintiff has not adequately alleged a cause of action under § 1983, this Court recommends
14 that plaintiff's complaint, and this action, be dismissed. This Court further recommends that
15 plaintiff's application to proceed *in forma pauperis* be stricken as moot. A proposed Order
16 accompanies this Report and Recommendation.

17 DATED this 17th day of February, 2012.

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19 JAMES P. DONOHUE
20 United States Magistrate Judge
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